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August 8, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Intercarrier Compensation for ISP-Bound Traffic*, WC Docket No. 99-68; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *IP-Enabled Services*, WC Docket No. 04-36

Dear Ms. Dortch:

By letter dated July 17, 2008, AT&T Inc. filed what it described as "three interrelated documents" in the above-referenced dockets. The Washington Independent Telecommunications Association ("WITA") is filing this letter in response to the AT&T filing.

The first of the documents filed by AT&T on July 17, 2008, was a letter from Robert W. Quinn, Senior Vice President Federal Regulatory, urging the Commission to act decisively in unifying terminating intercarrier rates for all carriers. WITA supports both Chairman Martin's commitment to comprehensive intercarrier compensation reform and the AT&T call to action.

WITA has previously filed comments in support of the Missoula Plan with a very few and very modest modifications to Track 2 to make the Missoula Plan more effective for those carriers. Those comments were filed jointly with other state associations.¹ WITA reiterates its support and joins AT&T in urging the

¹ At the time the comments were filed, WITA's legal name was the Washington Independent Telephone Association. That name has since been modified as shown above.

Commission to take action. WITA urges the Commission to approve the Missoula Plan with the minor modifications recommended by WITA. If that cannot be accomplished, WITA urges that the Commission, at the very least, move forward to address phantom traffic and develop a unified intercarrier compensation rate with appropriate transition for rural carriers to universal service support for lost access revenue.

In the State of Washington, the rural carriers participate in an access plan that is administered by the Washington Exchange Carrier Association ("WECA"). WECA, among other things, tracks rural carrier Washington intrastate minutes. WECA has reported that during the relatively short 28 month period from January of 2006 through May of 2008, total, monthly rural company intrastate access minutes among WECA's members have declined approximately thirty percent. In January of 2006, WECA's members' Washington intrastate access minutes were over 40 million minutes per month. By May of 2008, the total WECA member Washington intrastate access minutes had fallen to approximately 30 million minutes per month. The May, 2008, levels were approximately 72.3 percent of the January, 2006, levels.

At the same time, WECA members that are making efforts to identify terminating minutes over common trunk groups are reporting that fully fifty percent or more of the total minutes received over common access trunk groups do not have billing records associated with them. Only two or three years ago, that figure was twenty percent or less.

Thus, at the same time that billable access minutes are delivering, unbillable traffic is increasing. This appears to have an obvious correlation. For these reasons, WITA is supporting AT&T's call for the Commission to move forward to take action on the Missoula Plan that is before the Commission.

The second document filed by AT&T is entitled Petition of AT&T Inc. for Interim Declaratory Ruling and Limit Waivers. WITA agrees with AT&T's basic statement that interstate and intrastate access charges should apply to interexchange IP/PSTN traffic. See, AT&T's Petition beginning at Page 26. However, WITA does not agree with AT&T's position that intrastate interexchange IP/PSTN traffic would be assessed access charges only if the LEC's intrastate terminating access charges are set at or below the level of the interstate terminating access charges. AT&T Petition at p. 27.

As a basic tenet for its position that access rates apply to interexchange IP/PSTN traffic, AT&T cites to the Commission's statement that one of the Commission's "primary objectives with respect to the formulation of [its] access charge rules has been to assess access charges on all users of exchange access, irrespective of their designation as carriers, non-carrier service providers, or private customers."² AT&T Petition at p. 28. WITA supports this concept.

The rationale offered by AT&T that interstate access charges should apply to interstate interexchange IP/PSTN traffic is that subsidies have been removed from interstate terminating access charges. As a result, AT&T argues that those rates are economically efficient. AT&T Petition at p. 27. WITA agrees with this characterization and supports the application of interstate access charges to interstate interexchange IP/PSTN traffic.

WITA does not agree with the concept that lawful, tariffed intrastate access rates should not apply to intrastate, interexchange IP/PSTN traffic. If a state commission has authorized intrastate access rates to be at a particular level, that decision should stand and those access charges should apply until such time as this Commission takes action on comprehensive intercarrier compensation reform. There is no good reason to carve out intrastate, interexchange IP/PSTN traffic from lawful, tariffed intrastate access rates.

There certainly is no logical reason, as AT&T's position would lead to, that if an intrastate access rate is higher than the interstate access rate, then the rural carriers in that state cannot apply any access charges to intrastate, interexchange IP/PSTN traffic.³ While WITA does not advocate the following, at the very least, if the Commission adopts AT&T's position, that position should be modified so that in those cases where the intrastate access rate is higher than the interstate access rate, the intrastate access rate will be capped at the interstate level and will then apply to intrastate interexchange IP/PSTN traffic.

The third document filed by AT&T on July 17, 2008, is a letter regarding

² *Amendments of Part 69 of the Commission's Rules Relating To the Creation of Access Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Order on Further Reconsideration and Supplemental NPRM, 6 FCC Rcd 4524, ¶ 54 (1991).

³ See, AT&T's Petition at p. 35.

VoIP jurisdiction that urged the Commission to formally extend the preemptive effect of the Vonage Order⁴ to all interconnected VoIP services, including fixed-location VoIP services. WITA's position is that such action is not necessary and may be contrary to the public interest if taken in full.

The fixed-location VoIP services that carriers such as Comcast and Charter are providing are no different than the local exchange services provided by any other competitive local exchange carrier ("CLEC") in its effect on the customer receiving that service. The only difference is that fixed-location VoIP service is a different mode of transmission, beginning as an IP-based service on the originating end. The goal of fixed-location VoIP service is the same as the goal of TDM-based telecommunications service provided over fiber or copper networks. That is, to allow customers to communicate with residential customers and businesses on a local and interexchange basis. Further, regardless of how such service originates, some, perhaps most, fixed-location VoIP service does utilize the Public Switched Telecommunications Network ("PSTN"), at least for termination.

The rationale that is offered by AT&T as the basis for the requested preemption is that VoIP services should not be subject to a myriad of different forms of economic regulation. However, AT&T does not make the case that without preemption, economic regulation would be applied to the fixed-location VoIP services. CLECs in the State of Washington, for example, are not subject to any real form of economic regulation.⁵ They do not even file price lists with the Washington Commission. RCW 80.36.333 and RCW 80.36.330.

On the other hand, there is very good reason that the public interest would be served by clarifying that all CLECs, including those competing through the use of VoIP services are subject to non-economic regulation, including consumer protection and public safety provisions administered by the state commissions and other state authorities.⁶ There is no good reason to preempt state regulation and force customers of Comcast, for example, to be

⁴ Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) ("Vonage Order"), aff'd, Minnesota Pub. Utils. Comm'n v. FCC, 483 F.3d 570 (8th Cir. 2007).

⁵ CLECs do have a requirement to register. However, the entry burden is very low and has the advantage of clearly identifying the classification of the entity for interconnection and other relationships.

⁶ For example, consumer protection statutes administered by the State Attorney General's Office. Chapter 19.86 RCW.

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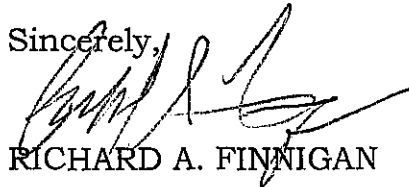
subject to the whim of Comcast's offering for consumer protection purposes.⁷

At the very least, the Commission should clarify that fixed-location VoIP services are subject to the following:

- The provision of E-911 service and contribution to the support of that service on the same basis as other intrastate carriers⁸
- Access to and the support of TRS-based services on the same basis as other intrastate carriers
- Consumer protection provisions of the state commission relating to such things as customer disconnection, customer notifications and other rules designed to protect the consumer

Thank you for the consideration of these points related to AT&T's filings of July 17, 2008.

Sincerely,



RICHARD A. FINNIGAN

RAF/km

cc: Chairman Kevin Martin (via e-mail)
Commissioner Michael Copps (via e-mail)
Commissioner Jonathan Adelstein (via e-mail)
Commissioner Deborah Tate (via e-mail)
Commissioner Robert McDowell (via e-mail)
Daniel Gonzalez (via e-mail)
Amy Bender (via e-mail)
Scott Deutchman (via e-mail)
Scott Bergmann (via e-mail)
Greg Orlando (via e-mail)
Nicholas Alexander (via e-mail)

⁷ Comcast's recent file-sharing debacle underscores this point.

⁸ To the extent that E911 and TRS are addressed by the Commission's actions in In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-151 (Released June 24, 2008) and other Commission and court orders, if the Commission takes preemptive action, the Commission should be careful to preserve the applicability of such prior actions.